

***United States Court of Appeals  
for the  
District of Columbia Circuit***



**TRANSCRIPT OF  
RECORD**



# TRANSCRIPT OF RECORD.

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Court of Appeals, District of Columbia

OCTOBER TERM, 1905

No. 1574.

372

THE POTOMAC LAUNDRY COMPANY, A CORPORATION,  
APPELLANT,

v.s.

ELIZABETH J. MILLER, EXECUTRIX OF THE WILL OF  
JAMES E. MILLER, DECEASED.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

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FILED JUNE 28, 1905.



COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

OCTOBER TERM, 1905

No. 1574.

THE POTOMAC LAUNDRY COMPANY, A CORPORATION,  
APPELLANT,

*vs.*

ELIZABETH J. MILLER, EXECUTRIX OF THE WILL OF  
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APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

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# In the Court of Appeals of the District of Columbia.

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THE POTOMAC LAUNDRY COMPANY, a Corporation, Appellant,  
vs.  
ELIZABETH J. MILLER, Executrix of the Will of James E. Miller, Deceased. } No. 1574.

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a Supreme Court of the District of Columbia.

ELIZABETH J. MILLER, Executrix of the Will of James E. Miller, Deceased, Plaintiff,  
vs.  
THE POTOMAC LAUNDRY COMPANY, a Corporation, Defendant. } No. 47122. At Law.

UNITED STATES OF AMERICA, } ss :  
District of Columbia,

Be it remembered, that in the supreme court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled cause, to wit:—

1 *Order Designating Record.*

Filed April 3, 1905.

In the Supreme Court of the District of Columbia, the 3rd Day of April, 1905.

ELIZABETH J. MILLER, Executrix,  
vs.  
THE POTOMAC LAUNDRY Co., a Corporation. } Law. No. 47122.

The clerk of said court will please make up the record in the above case on appeal, as follows:

Declaration;

Amended pleas filed March 10, 1905, and affidavit of defense filed Feb'y 21, 1905.

Judgment;

Appeal;

Memo. of filing appeal bond and citation.

CHAS. T. HENDLER,  
LEONARD J. MATHER,  
*Attorneys for Defendant.*

Filed August 10, 1904.

In the Supreme Court of the District of Columbia.

ELIZABETH J. MILLER, Executrix of the Will of James E. Miller, Deceased, Plaintiff,	} At Law. No. 47122.
vs.	
THE POTOMAC LAUNDRY COMPANY, a Cor- poration, Defendant.	

The plaintiff is the executrix of the will of James E. Miller, deceased, duly appointed and qualified in the supreme court of the District of Columbia holding a probate court, and as such executrix sues the defendant, The Potomac Laundry Company, a corporation of the State of Virginia, doing business and having an office in the District of Columbia, for money payable by the defendant to the plaintiff's testator during his lifetime for goods bargained and sold by the plaintiff's testator during his lifetime to the defendant, and for goods sold and delivered by the plaintiff's testator in his lifetime to the defendant, and for work done and materials provided by the plaintiff's testator during his lifetime for the defendant at its request, and for money lent by the plaintiff's testator in his lifetime to the defendant, and for money paid by the plaintiff's testator during his lifetime for the defendant at its request, and for money received by the defendant for the use of the plaintiff's testator during his lifetime, and for money found to be due from the defendant to the plaintiff's testator during his lifetime on accounts stated between them and for money found to be due from the defendant to the plaintiff as executrix as aforesaid on accounts stated between them.

And the plaintiff claims five hundred and thirty-eight dollars and twenty-three cents (\$538.23) with interest from the 17th day of March, 1903, according to the particulars of demand hereto annexed, besides costs of suit.

WILLIAM C. PRENTISS,  
*Attorney for Plaintiff.*

The defendant is to plead hereto on or before the twentieth day, exclusive of Sundays and legal holidays, occurring after the day of the service hereof; otherwise judgment.

WILLIAM C. PRENTISS,  
*Attorney for Plaintiff.*



4

*Particulars of Demand.*

Filed August 10, 1904.

WASHINGTON, D. C., *March* 17, 1903.

The Potomac Laundry Company to James E. Miller, Dr.

## In Boiler Room.

To excavating for boiler room 21½ days at \$1.10.....	23.47
labor on cement work in same for walls 3½ days at \$1.25.....	4.38
carpenter's work on same 2½ days at \$2.25.....	5.25
labor lifting irons and helping to set boiler 11 7/9 days at \$1.10.....	12.96
carpenter on ceiling 2½ days at \$2.25.....	5.63
laborer do. 2½ days at \$1.10.....	2.75

## Materials Used in Boiler Room.

9/10 cub. yds. concrete sand at 85c.....	.77
8½ bbls. cement (Cumberland) in brickwork at 90c.....	7.65
2 bbls cement (Portland) in floor etc. at \$2.25.....	4.70
2½ cu. yds. cracked brick at 50c.....	1.25
25 pcs. 1 by 2 by 14 for ceiling to nail iron to.....	2.20
16,620 bricks to set boiler used by Brook at \$5.50.....	91.41
9,266 bricks for walls to room at \$8.50 in wall.....	78.76
mortar (sand and lime) for 25,885 bricks 32½ loads at \$1.25... ..	40.41
painting smoke-stack, tank, marking room etc. 6 days at \$2.....	12.00
2 gals. B. oil at 75c.....	1.50
12 lbs. prime metallic at 35c.....	.35
bricklayers stopping up windows and resetting same 4 4/9 days at \$4.25.....	17.47
laborer moving coal, ashes, bones, etc. 8 7/9 days at \$1.10 per day.....	9.66
	<hr/>
	322.58

5 Bro't for'd.....	322.58
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## Work in Old Laundry Building and Addition.

putting up fixtures in office 4 days at \$2.15.....	8.60
ceiling 10 days 6½ hrs. at \$2. per day.....	21.44
marking room 5½ days at \$2.....	11.
carpenter, miscellaneous work (fixing tubs, boxes, bins, smoke-stack, etc.) 15½ days at \$2.....	31.33

assorting room (2nd floor) 7 days 5 hrs. at \$2.15 per day.....	16.24
making tables from 20 in. wide by 6 ft. long to 5 ft. wide by 16 ft. long, 18 tables in all, 14 da. at \$2.15.....	30.10
feed bins in stable 4½ days at \$2.25.....	10.12
stairway in stable 1 day 5½ hrs. at \$2.25 per da.....	3.62
rooms for blankets and dressing room 4½ da. at \$2.00...	9.00

## Materials (in same as above).

13 bbls. cement Portland at \$2.35.....	30.55
4 cu. yds. concrete sand at 85c.....	3.40
½ cu. yd. cracked brick at 50c... ..	.25
1 piece of 8 by 8 by 8 ft. at 4c. per ft.....	1.76
3 pcs. 1 by 10 by 16 dressed Va. at 3c.....	1.20
9 pcs. 3 by 4 by 18 Ga. at \$2.50 per 100 ft.....	4.05
395 sq. ft. of flooring at \$2.50 per 100 ft..... ..	9.87
165 sq. ft. partition at \$2.50 per 100 ft.....	4.12
nails, 100 lbs.....	5.00

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524.23

horse Spry bought Dec. 1, 1902.....	60.00
balance due on December 1902 rent.....	6.00
interest at 6% for 3 months.....	8.00

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\$598.23

cr. June 15, 1903, by price of horse Spry.....	60.00
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Balance due..... \$538.23

## 6 DISTRICT OF COLUMBIA, ss :

Florence C. Miller, being duly sworn, says that she is the agent of Elizabeth J. Miller, the plaintiff named in the declaration to which this affidavit is attached and was also the agent of James E. Miller, of whose will the said plaintiff is executrix, and has personal knowledge of the matters hereinafter set forth; that the said James E. Miller, in his lifetime, at the request of The Potomac Laundry Company, the defendant named in said declaration, furnished materials and provided workmen and did certain work in and about certain premises in the city of Washington, in said District, occupied and used by the said defendant as a steam laundry; that the statement hereto and to the said declaration annexed as particulars of demand is a just and true account of said material, labor and work; that the prices charged therein are fair and reasonable and are the exact cost of the work incurred by the said James E. Miller; that no part of the sums charged in said statement of account has been paid other than the amount credited thereon as payment of the price of the certain horse charged therein; and that the amount shown to be due

by said statement of account, viz: five hundred and thirty-eight dollars and twenty-three — (\$538.23) with interest from the 17th day of March, 1903, is still justly due and owing from the said defendant to the said plaintiff as executrix as aforesaid and the said plaintiff is entitled to recover the same from the said defendant, exclusive of all set-offs and just grounds of defense.

FLORENCE C. MILLER.

Subscribed and sworn to before me this second day of August, A. D. 1904.

ALBANUS S. T. JOHNSON,

[NOTARIAL SEAL.]

*Notary Public.*

7

*Affidavit of Defense.*

Filed February 21, 1905.

DISTRICT OF COLUMBIA, *To wit:*

James H. Ellsworth, being first duly sworn on oath deposes and says that the Potomac Laundry Company was chartered under the laws of the State of Virginia by William M. Mooney, who was its president, James H. Ellsworth, who was its vice-president, and James E. Miller, deceased, who was its secretary and treasurer, but that since its incorporation, and owing to a failure on the part of the said incorporators to comply with the laws governing and regulating such bodies corporate, affiant is informed, believes, and therefore avers that at the time suit was brought herein said corporation had resolved itself into a partnership; that in September, 1903, the said James E. Miller, deceased, sold his share in said firm to affiant, who thereafter, in company with the said William M. Mooney, carried on the said laundry business under the firm name of the Potomac Laundry Company, up to January last, when affiant in turn sold out his share or interest in said firm to the said William M. Mooney, who has, with others, since incorporated the Potomac Laundry Company under the laws of the District of Columbia.

Affiant further says that in May, 1902, the said William M. Mooney, James H. Ellsworth and James E. Miller, deceased, who, as the Potomac Laundry Company then carried on business at 1714

8 and 1716 E street, northwest, and in the stable in rear, premises owned by the said James E. Miller, deceased, for which said corporation was paying a monthly rental of \$80., met and discussed their growing needs for additional room; that it was then suggested by the said James E. Miller, deceased, that he had ground on the east of the then structure which could be utilized for the purpose of enlarging the building and plant, and at the same meeting a contract was made and entered into between the said James E. Miller, deceased, in his individual capacity, and the said corporation com-

posed as aforesaid of Mooney, Ellsworth and Miller, whereby it was definitely understood and agreed that the said Miller would make all the necessary improvements at his own cost and expense, for which he would ask, and which it was then and there agreed should be paid in the form of monthly rental, 8% per annum on the total valuation of the ground and all the buildings erected thereon for the use and occupation of the said corporation; but nothing was then said about certain parts of said construction work—which might be deemed to be applicable only to the uses and for the purposes of the laundry—being paid for outright when completed by said laundry company, but it was distinctly understood at this meeting in May and at all times subsequently, when the matter of changes necessitating additional charges came up for discussion between them, that whatever additional cost was incurred by any change or alteration should be reimbursed to the said James E. Miller as above indicated, viz: by paying him rental at the rate of 8 per centum per annum on the total cost of the said Miller's investment; and this was not only suggested by Mr. Miller, but was

9 always agreed to by him without demur or objection on his part in the various conversations which took place between them—both on the 22nd day of May 1902, when the contract was made, and at all subsequent conversations which took place between that date and the time of the occupancy of the new building in October of the same year; that after said contract was made, thereafter the said corporation's monthly rental to Mr. Miller was figured out on said basis, and the monthly amount of \$140. agreed upon, which was embodied in a lease for five years beginning Jan. 1, 1903.

The affiant denies the justness of the claim now made and says the partnership firm of which he was a member at the time suit was instituted was not indebted to the Miller estate in the sum claimed, or in any amount whatsoever; but avers on the contrary that the said estate is indebted to said partnership firm in the sum of \$127.82 which is made a part hereof by plea of set-off and contained in the particulars of set-off attached hereto.

Affiant furthermore says that should said claim as made be finally held by court or jury to be a just, equitable and legal demand, then it is desired that the proportionate share of said Miller's indebtedness to the said partnership firm arising from his membership in said firm at the time he transferred his interest therein be set off as against said claim.

JAMES H. ELLSWORTH.

Subscribed and sworn to before me this 10th day of February, A. D., 1905.

[NOTARIAL SEAL.]

H. J. SWEENEY,  
*Notary Public, D. C.*

10

*Amended Plea.*

Filed March 10, 1905.

In the Supreme Court of the District of Columbia.

ELIZABETH J. MILLER, Executrix of the Will of James E. Miller, Deceased, Plaintiff,	} At Law. No. 47122.
<i>vs.</i>	
THE POTOMAC LAUNDRY COMPANY, a Corporation, Defendant.	

Comes now the defendant, and with leave of the court first had and obtained, files this its amended plea to the declaration filed in the above entitled cause :

*First.* It does not owe the said plaintiff the said sum of money, or any part thereof, in manner and form as therein alleged.

*Second.* And for further plea says that it did not undertake or promise in manner and form as therein alleged.

LEONARD J. MATHER,  
CHAS. T. HENDLER,  
*Att'ys for Defendant.*

11

Supreme Court of the District of Columbia.

FRIDAY, *March* 10, 1905.

Session resumed pursuant to adjournment, Mr. Justice Barnard, presiding.

\*       \*       \*       \*       \*       \*       \*

ELIZABETH J. MILLER, Executrix of the Will of James E. Miller, Deceased, Pl'ff,	} At Law. No. 47122.
<i>v.</i>	
THE POTOMAC LAUNDRY COMPANY, a Corporation, Def't.	

Upon motion of the defendant, leave is hereby granted it to withdraw its pleas heretofore filed and to file in lieu thereof the plea of general issue, which is accordingly done: Whereupon comes on for hearing the motion of the plaintiff for judgment, and the same having been heard, it is considered that said motion be, and the same hereby is granted: Therefore it is considered that the plaintiff recover against the defendant the sum of five hundred and thirty-eight dollars and twenty-three cents (\$538.23), with interest thereon from the 17th day of March, 1903, at 6% per annum until paid, being the money payable by it to the plaintiff, by reason of the premises, together with her costs of suit to be taxed by the clerk, and have execution thereof.

12

*Order for Appeal.*

Filed April 1, 1905.

In the Supreme Court of the District of Columbia, the 1st Day of  
April, 1905.

ELIZABETH J. MILLER, Executrix,	}	Law. No. 47122.
vs.		
THE POTOMAC LAUNDRY Co., a Corporation.		

The clerk of said court will please note defendant's appeal in above case.

CHARLES H. HENDLER,  
LEONARD J. MATHER,  
*Attorneys for Defendant.*

*Memorandum.*

April 3, 1905.—Appeal bond filed.

13 In the Supreme Court of the District of Columbia.

ELIZABETH J. MILLER, Executrix of the Will of James E. Miller, Deceased,	}	At Law. No. 47122.
vs.		
THE POTOMAC LAUNDRY COMPANY, a Corporation.		

The President of the United States to Elizabeth J. Miller, executrix of the will of James E. Miller, deceased, Greeting :

You are hereby cited and admonished to be and appear at a Court of Appeals of the District of Columbia, upon the docketing the cause therein, under and as directed by the rules of said court, pursuant to an appeal filed in the clerk's office of the supreme court of the District of Columbia, on the 1st day of April, 1905, wherein The Potomac Laundry Company, a corporation, is appellant, and you are appellee, to show cause, if any there be, why the judgment rendered against the said appellant, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Harry M. Clabaugh, chief justice of the supreme court of the District of Columbia, this 3rd day of April in the year of our Lord one thousand nine hundred and five.

[Seal Supreme Court of the District of Columbia.]

J. R. YOUNG, *Clerk*,  
By W. E. WILLIAMS, — *Clerk*.

Service of the above citation accepted this 3d day of April, 1905.

GEO. FRANCIS WILLIAMS,  
*Attorney for Appellee.*

[Endorsed:] No. 47122 Law. Elizabeth J. Miller, executrix, *vs.*  
The Potomac Laundry Company. Citation. Issued Apr. 3, 1905.  
L. J. Mather, attorney for appellant.

14 *Appellee's Directions for Additional Parts of Record.*

Filed June 7, 1905.

In the Supreme Court of the District of Columbia.

ELIZABETH J. MILLER, Executrix, Plaintiff,	} At Law. No. 47122.
<i>vs.</i>	
THE POTOMAC LAUNDRY COMPANY, a Corporation, Defendant.	

The clerk of said court will please include in the record on appeal in said cause the following proceedings:

1. Whole of paper filed September 13, 1904.
2. Motion to strike out pleas filed September 16, 1904 (omitting accompanying notice and affidavit).
3. Judgment entered November 25, 1904 M. 45, page 414.
4. Motion to vacate judgment and affidavits filed December 6, 1904.
5. Order of December 30, 1904 (endorsed on above motion to vacate judgment).
6. The clerk will note that similar orders were entered Jan. 6, 13, 20, 27, Feb. 3 and 10, 1905, continuing said motion from week to week until February 17, 1905.
7. Order of February 17, 1905, vacating judgment, etc., M. 46, page 35.
8. Pleas filed February 21, 1905. (Clerk will note that accompanying these pleas there appears as particulars of set off the receipted bill which was filed as "Exhibit B" to the paper filed September 13, 1904.)

WILLIAM C. PRENTISS,  
GEO. FRANCIS WILLIAMS,  
*Att'ys for Plaintiff.*

Filed September 13, 1904.

In the Supreme Court of the District of Columbia.

ELIZABETH J. MILLER, Executrix of the Will of James E. Miller, Deceased, Plaintiff, vs. THE POTOMAC LAUNDRY COMPANY, a Corpo- ration, Defendant.	}	At Law. No. 47122.
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Comes now the defendant, The Potomac Laundry Company and for answer to the declaration of plaintiff herein and for set off and counter claim against said plaintiff says :

First. The defendant denies each and every allegation and averment contained in said declaration not hereinafter specifically admitted.

Second. The defendant admits it is a corporation organized under the laws of the State of Virginia doing business in the District of Columbia and further admits that the plaintiff is the executrix of the will of James E. Miller, deceased.

Third. The defendant says that the Potomac Laundry Company was doing business in the District of Columbia during the year of 1902 and 1903, and at the times mentioned in the account filed with the plaintiff's declaration, but defendant states that during the month of May, 1902, an agreement was entered into by and between the defendant and James E. Miller deceased who at the time was one of the officers of the defendant's corporation in substance and in affect as follows:

16 That the defendant was at the time occupying certain premises leased from James E. Miller, deceased, being the western portion of lot number forty-three in square 172, in the city of Washington, District of Columbia, covered by a two story brick building and used for carrying on the business of laundering; and lot number thirty-eight in said square covered by a two story-brick building used as a stable by defendant.

That in said month of May, 1902, said James E. Miller, suggested at a meeting of the directors of defendant company that the building then being used on said lot forty-three was not large enough to carry on a profitable business by said defendant company, and offered to enlarge the said building by building on the eastern portion of said lot forty-three, and construct a building suitable for the purpose of said defendant company, and would lease the same to the defendant company at an annual rental equal to eight per cent. of the value of the lot and the cost of the improvements, which said offer was agreed to on behalf of said company, and said James E. Miller soon thereafter entered upon the construction of said build-



ing and completed the same on or about October 1, 1902, and said premises, including the building on said lot number forty-three and the building on said lot number thirty-eight have been occupied by said defendant company ever since October 1, 1902 and are still occupied by said defendant company. That on February 27th, 1903, a lease for said premises, being lots number forty-three (43) and thirty-eight (38) in square one hundred and seventy-two (172) in said city of Washington, District of Columbia, and the buildings

then situate thereon, for the period of five years from January 17 1, 1903, was executed by and between said James E. Miller and the said Potomac Laundry Company, at the annual rental of \$1,680. which lease was reduced to writing and was a full adjustment and settlement of all matters of cost and expenses of every kind between the said James E. Miller and the defendant up to that date which included and settled the items mentioned and set out in the account filed with the declaration of plaintiff. Copy of said lease and agreement is hereto attached, marked "Exhibit A," and made a part hereof.

Defendant further urges for set off and counter claim to declaration of the plaintiff and to the account set up with said declaration that on March 9, 1903, the defendant through its office inadvertently and by mistake paid out for account of the plaintiff one hundred and twenty-seven — and eighty-two cents (\$127.82) on account for lumber and materials, copy of said account hereto attached and marked "Exhibit B" and made a part hereof, and that said plaintiff never paid to the defendant the said amount or any part thereof but shortly after said date plaintiff died and his representative has never paid to the defendant the account or any part thereof.

Whereof the plaintiff asks judgment against defendant for one hundred and twenty-seven dollars and eighty-two cents (\$127.82) with interest at 6% from March 9, 1903 and for costs.

POTOMAC LAUNDRY COMPANY,  
By JAMES H. ELLSWORTH, *Vice President.*  
RANKIN MASON, *Att'y.*

18

"EXHIBIT A."

Filed September 13, 1904.

This agreement, made this first day of January, A. D., 1903, by and between James E. Miller, of the city of Washington, in the District of Columbia, of the first part, and the Potomac Laundry Company, a corporation, incorporated under the laws of the State of Virginia, and doing business in said city of Washington, of the second part:

Witnesseth, that the said party of the first part, for and in consideration of the rents to be paid, and the covenants, promises agreements and provisions hereinafter contained, to be kept, observed and

performed by the said party of the second part, has let, and does hereby let, unto the said party of the second part all those pieces or parcels of ground in the city of Washington aforesaid, known as lot numbered forty-three (43) in square numbered one hundred and seventy-two (172), on which now stands a brick building two (2) stories high, running back to the south line of said lot; and also lot numbered thirty-eight (38) in said square, on which stands a brick stable two (2) stories high; the said lots being according to the plan or plat of the said city of Washington; the premises or buildings erected on said lots being known as numbers 1710, 1712, 1714 and 1716 on E street, northwest, in said city, and the stable south of and in the rear of said premises numbers 1716, 1718 and 1720 on said E street, for the term of five (5) years, from the first day of January, A. D. 1903, to be fully completed and ended on the first (1st) day of January, A. D. 1908, for the sum of sixteen hun-

19       dred and eighty (\$1680) dollars per annum, payable in equal monthly instalments of one hundred and forty (\$140) dollars in advance, the first payment thereof to be made on or before the fifteenth (15th) day of January, A. D. 1903, and a like sum on or before the fifteenth (15th) day of each and every month thereafter during said term.

And the said party of the second part, for and in consideration of the premises, hereby covenants, promises and agrees to and with the said party of the first part, his heirs, executors, administrators and assigns, that the said party of the second part has taken and does hereby take and hold the said lots and premises for the said term of five (5) years, as aforesaid, at the said sum of sixteen hundred and eighty (\$1680) dollars, payable in equal monthly instalments, in advance, as herein stated, to be paid to the said party of the first part, his heirs, executors, administrators, and assigns, and further, will pay all water rents and gas bills, and bills for electric lights and electricity used on said premises, or that may be hereafter used on said premises, making the necessary deposit for the same at the office of the gas and electric companies to secure the same; and further, will not sub-let or assign said lots in buildings or said premises, or any part or portion thereof, or carry on any business therein, or in any part or portion thereof, except that of laundrying and cleaning and pressing of clothes without the written consent of the said party of the first part, his heirs, executors, administrators or assigns, first had and obtained; and further, will not use the same, or any part or portion thereof, or permit the same to be used or any part  
20       or portion thereof, for any disorderly or unlawful purpose whatsoever; and further, will not make any alterations in or about said building or buildings, or said premises, or any part thereof, without the written consent of the said party of the first part, his heirs or assigns, first had and obtained; and further, will do and make all repairs during the term of this lease at its own cost and expense, so as to keep said building or buildings and premises in good order and condition and repair, except the roofs and walls,

which roofs and walls are to be kept at all times in good repair by said party of the first part, his heirs and assigns, provided the said roofs and walls be not injured by the acts or negligence of the said party of the second part by and through steam or gases; and further, that the said party of the second part will surrender the said lots building and buildings and premises at the expiration of term of its tenancy in good order, condition and repair, ordinary wear and tear and damage by the act of God or public enemy excepted.

And it is hereby understood and agreed, that if the said party of the second part shall fail to pay any instalment of rent therein reserved at the time and manner agreed upon, although no demand shall have been made for the same, or shall fail to pay the water rent bills, the gas bills, or the electric light bills, or for the use of electricity hereinbefore provided, at the time or times when the same shall become due and payable as aforesaid, or shall sub-let or assign the said lots and premises, or any part or portion thereof as aforesaid, or shall carry on any business therein, except that of laundry business, and

21 cleaning and pressing of clothes, without the written consent of said party of the first part, his heirs or assigns, as aforesaid, or shall make any alterations in or about said premises without the written consent of the said party of the first part, his heirs or assigns as aforesaid, or shall use the same for any disorderly or unlawful purposes whatsoever as aforesaid, or further should fail to do and make all repairs as aforesaid, so as to keep said building or buildings and premises in good condition and repair as aforesaid, or shall break either of the covenants, promises, agreements or provisions herein contained on its part to be kept observed and performed, then, and in either of said events, this lease or agreement, and all things herein contained, shall cease and determine, and then it shall be lawful for the said party of the first part, his heirs or assigns, to terminate this tenancy by a notice in writing of three (3) days to that effect, which notice may be served on the party of the second part, by leaving the same with the president or secretary or treasurer of the said party of the second part, or by leaving the same on the premises; and upon the expiration of said three (3) days the tenancy created by this lease shall forever cease and determine, and the said party of the first part, his heirs or assigns, may re-enter on said premises and re-possess the same, and avail him or themselves of the remedies provided by the law regulating proceedings between landlord and tenant in the District of Columbia, without further notice—all other notices in said case being hereby expressly waived.

22 It is hereby further understood, agreed and provided that if under the provisions of this agreement default or breach be made in any of the covenants, promises, agreements and provisions herein mentioned to be kept, observed and performed by the said party of the second part, and be compromised and settled, then such compromise or settlement shall not constitute a waiver of any covenant, promise agreement or provision herein contained; and further, no waiver of any breach of any covenant, provision,

agreement or promise shall be construed to be a waiver of the covenant, provision, agreement or promise, or of any subsequent breach thereof. And it is further understood and agreed that the said party of the second part shall deliver the said lots, building, buildings and premises, and every part thereof, in the same good order, condition and repair in which the same now are, usual wear and tear and loss by fire and storms excepted.

It is further agreed and understood that should said lots or premises become untenable by reason of fire, or other cause (not caused by accident or negligence aforesaid) said tenancy shall cease, and pro rata share or portion of any rent paid in advance shall be repaid to the party of the second part for the month for which paid in advance.

It is hereby understood and agreed between the parties hereto that in the event that the said party of the first part, his heirs or assigns, or owner of the south part of lot twenty-five (25), in said square, which lot fronts on Seventeenth street, northwest, and runs back to the rear line of said part of said lot forty-three (43) hereby leased,

23 should build on the rear part of said lot twenty-five (25) and obstruct the windows now in the rear brick wall of building now on said lot forty-three (43), it is hereby understood and agreed, that the said party of the second part shall have the full right and power, at its own cost and expense, to put four (4) skylights on the roof of said building in lieu or place of said windows so obstructed, if said party of the second part desires skylights put in said roof. And further it is hereby agreed that the said party of the second part may, at its own cost and expense, enlarge the doorway, so as to remove from the inside of the above described premises any boiler, and shall put and place the said doorway in as good condition as the same is now, at its own cost and expense.

And this deed of lease further witnesseth, that the said Potomac Laundry Company, party hereto of the second part, does hereby appoint William M. Mooney (its president) its true and lawful attorney, to seal, execute and acknowledge these presents as the act and deed of the said Potomac Laundry Company.

In witness whereof the said party of the first part has hereunto set his hand and seal, and also witness the corporate seal of the said Potomac Laundry Company, party hereto of the second part, hereto attached, and the signature of the president of said company, the day and year first above written.

JAMES E. MILLER. [SEAL.]  
 POTOMAC LAUNDRY COMPANY,  
 By W. M. MOONEY,  
*President of the Potomac Laundry Company.*

Signed, sealed and delivered in the presence of:

WM. JNO. MILLER.  
 WILLIAM C. PRENTISS.

The word "kept" being first intended on 3 page and also the word- "on building" being intended on second page.

I, Albanus S. F. Johnson, a notary public in and for the District of Columbia, do hereby certify that James E. Miller, party to a certain deed of lease, bearing date on the first day of January, A. D. 1903, and hereunto annexed, personally appeared before me in the said District of Columbia, and being personally well known to me as the person who executed the said deed and acknowledged the same to be his act and deed; and I further certify that personally appeared before me in the said District, William M. Mooney, he being personally well known to me, to be the person who is known and described as professing to be the attorney named in the letter of attorney contained in the foregoing deed of lease bearing date on the first day of January, A. D. 1903, and hereunto annexed, and by virtue and pursuance of the power and authority thereby to him granted, acknowledged the said deed of lease as the act and deed of the said Potomac Laundry Company, mentioned in said deed.

ALBANUS S. F. JOHNSON,  
*Notary Public.*

Sold to Potomac Steam Laundry Company.

<hr/>					
May	22.	2	pcs. 3 x 6 18 Ga. Dxs.....	54	
		2	" 3 x 6 16 " " .....	48	
				<hr/>	
				102	3½
	26.	1	" 6/4 x 20 12 white pine .....	30	8
		1	" 2 x 4 16 " " .....	11	7
					<hr/>
					2.40
					.77
					<hr/>
					3.17
June	21.	6	" 1 x 12 12 spruce shelving ...	72	35
July	8.	3	" 5/4 x 12 12 white pine.....	45	10
		1	" .1 x 12 16 Va. clear.....	16	3½
		1	" 2 x 4 16 Dxs.....	11	2
					<hr/>
					.56
					.22
Aug.	14.	3	" ¾ x 12 16 white pine.....	48	
		2	" 5/4 x 12 16 " " .....	40	
				<hr/>	
				888	...
					....
	18.	5	" ¾ x 12 16 white pine shelv'g.....	80	4½
					<hr/>
	19.	48	lineal ¾ omarker round. ....	50	.24
		12	" 4 " crown moulding.....	2	.24
		64	" 1½ shoe " .....	75	.48
		5	pcs. ¾ x 12 16 white pine seconds.....	80	8
					<hr/>
					6.40
					<hr/>
					7.36
Sept.	11.	2	" ¾ x 12 14 # 2 Va.....	...	....
	24.	14	" " 16 Va. culls. D 25.....	224	2
		5	" 2 x 4 16 Va. Dxs.....	55	2
					<hr/>
					1.10
					<hr/>
					5.58

Oct.	2.	250 ft. # 1 Va. partition.....	3	7.50	
		10 pcs. 2 x 4 16 Ga. rip/center....	110		
		6 " " 16 Dsd. 45 .....	66		
			176	3½	6.16
	9.	25 " 7/8 x 12 16 D. white pine.....	400	8	32.
	13.	10 " 7/8 x 10 16 # 1 spruce shelv'g.....	140	4½	6.30
	14.	2 " 5/4 x 12 14 white pine selects.....	36	9	3.24
	15.	88 ft. 6/4 wide white pine selects.....	10	8.80	
		6 pcs. 2 x 4 16 D 45.....	66	2	1.32
					10.12
	24.	150 ft. D's sheathing picked.....	16		2.40
	27.	525 " # 2 partition.....	27.50		14.44
Nov.	1.	12 pcs. 7/8 x 12 16 white pine shelv'g.....	192	5	9.60
		4 " 2 x 4 16 D's 45.....	44	2	.88
					10.48
	20.	16 lineal 4 " crown moulding .....	2		.32
					132.08
					4.26
					127.82

Paid March 9, 1903.

THOS. R. RILEY.  
DIETZ.

26 James H. Ellsworth, being duly sworn says that he is now the vice president and general manager of the defendant, The Potomac Laundry Company a corporation and that he was an officer, interested in the management when the transactions referred to in the foregoing answer occurred and that he knows the facts and the allegations and statement in said answer are true, to the best of his knowledge and belief.

JAMES H. ELLSWORTH.

Subscribed and sworn to before me this 12th day of September, 1904.

E. C. WHITE,  
Notary Public, D. C.

[SEAL.]

*Motion to Strike Out Answer.*

Filed September 16, 1904.

In the Supreme Court of the District of Columbia.

ELIZABETH J. MILLER, Executrix of the Will of James E. Miller, Deceased, Plaintiff,	} At Law. No. 47122.
vs.	
THE POTOMAC LAUNDRY COMPANY, a Corpo- ration, Defendant.	

27 Comes now the plaintiff by her attorney and moves the court to strike out all and every part of the answer or plea of the defendant and grant judgment as for want of a plea, and for cause shows :



vacate the judgment heretofore rendered in this cause, and for leave to file a supplemental plea herein, for the reason set out in the affidavit filed herewith.

RANKIN MASON,  
*Attorney for Defendant.*

*Affidavits.*

Filed December 6, 1904.

In the Supreme Court of the District of Columbia.

ELIZABETH J. MILLER, Executrix, etc., Plaintiff,	} Law. No. 47122.
vs.	
THE POTOMAC LAUNDRY Co., Defendant.	

Rankin Mason, of lawful age, upon his oath says that when the motion for judgment heretofore filed herein was set down for hearing, he appeared for the purpose of arguing the same, but said motion was not reached; that during the week following it became necessary for him to go to St. Louis on business of importance, and upon a sudden call; that before leaving he requested Mr. Geo. S. Chase, an attorney of this court, to appear for him in this behalf, and either secure a continuance of said motion until affiant could return to Washington, or represent him at the argument thereof; that he was absent from Washington about three weeks, and a day or two after his return was informed that said motion had been presented *ex parte*, and a judgment thereon rendered in favor of the plaintiff and against the defendant.

Affiant further says that the defendant in this cause has a complete and sufficient defense thereto, as set out in the plea and answer already filed herein; that while he admits that said plea and answer are informally and inartificially drawn they disclose, complete defense to this action, if properly pleaded. Affiant fur-

30 ther says that said plea and answer were drawn in much haste, he not having been employed in the case until the plea was due to be filed; that he was at the time not familiar with the rules of this court and in haste drew said plea and answer in conformity with the code of practice with which he had for many years been familiar, and this affidavit is made for the purpose of securing if possible an order vacating the judgment heretofore rendered and allowing him to file a plea in due form together with an affidavit of defense, in conformity with the rules of this court, in order that justice may not miscarry by reason of the informality in said plea; or that he may be allowed to file such supplemental affidavit of merits as is permissible in cases where sufficient defense is disclosed but inartificially presented.

RANKIN MASON.



Subscribed in my presence and sworn to before me, this 5th day of December, 1904.

[NOTARIAL SEAL.]

K. E. DOHERTY,  
*Notary Public, District of Columbia.*

31

Filed December 6, 1904.

In the Supreme Court of the District of Columbia.

ELIZABETH J. MILLER, Executrix, etc., Plaintiff,

*vs.*

THE POTOMAC LAUNDRY Co., Defendant.

} Law. No. 47122.

George S. Chase, of lawful age, upon his oath says, that when the motion for judgment in this cause was to come up for hearing, he appeared, at the request of the attorney of record for the defendant, Mr. Rankin Mason, for the purpose of advising with Mr. Mason with reference thereto, said Mason being unfamiliar with the practice in this court; that said motion was not reached on said day; that a few days thereafter said Mason was called West on important business and requested this affiant to appear in said cause on his behalf and secure a continuance of said motion or to present the objections thereto; that for three successive Fridays this affiant appeared and remained in court most of the day, but that on each successive occasion the court failed to reach said motion; that on Friday, November 11th, affiant remained in this court for the purpose of taking up said motion until afternoon, when he was informed by attorneys then engaged in arguing certain motions that they *will* consume the balance of the day, and the attorney for the plaintiff herein not being present in court affiant went away; that thereafter, as appears from the record, and as affiant is informed, said attorney for plaintiff came into court and

32 said cause was submitted *ex parte*, and affiant was thereafter notified that permission had been reserved for him to file any points with the court that he might desire, in writing; that he was away for several days and did not receive said notification, and that in the meantime a judgment in favor of said plaintiff and against the defendant was entered up in this cause; that affiant believes that the defendant has a complete and adequate defense to said action, if the same were properly pleaded, and which is sufficiently disclosed in the plea and answer already on file though informally and inartificially stated.

GEO. S. CHASE.

Subscribed in my presence and sworn to before me this 5th day of December, 1904.

[NOTARIAL SEAL.]

K. E. DOHERTY,  
*Notary Public, District of Columbia.*

## Supreme Court of the District of Columbia.

FRIDAY, *December 30*, 1904.

Session resumed pursuant to adjournment, Mr. Justice Barnard presiding.

ELIZABETH J. MILLER, Plaintiff,	} At Law. No. 47122.
<i>v.</i>	
THE POTOMAC LAUNDRY Co., Defendant.	

33 Upon motion of the defendant, it is ordered that the motion to vacate the judgment heretofore rendered herein be, and hereby is, continued until and including the 6th day of January, 1905; and that this term be, and hereby is prolonged until said date for the purposes of hearing said motion.

*Memorandum.*

December 30, 1904.—Motion to vacate judgment continued to January 6, 1905, and similar orders made January 6, 13, 20, 27; February 3 and 10—continuing said motion to February 17, 1905.

## Supreme Court of the District of Columbia.

FRIDAY, *February 17*, 1905.

Session resumed pursuant to adjournment, Mr. Justice Barnard presiding.

\*            \*            \*            \*            \*            \*

ELIZABETH J. MILLER, Executrix, &c., Plaintiff,	} At Law. No. 47122.
<i>v.</i>	
THE POTOMAC LAUNDRY Co., Defendant.	

34 Upon hearing the motion of the defendant to vacate the judgment rendered herein and for leave to plead, it is considered that said judgment be, and the same hereby is vacated, set aside and for nothing held with leave to said defendant to plead over as it may be advised upon payment of the costs of this suit to this date.

*Memorandum.*

Accompanying amended pleas filed February 21, 1905, there appears as particulars of set-off a receipted bill, which is the same as "Exhibit B" to the paper filed September 13, 1904.

## Supreme Court of the District of Columbia.

TUESDAY, *May* 16, 1905.

Session resumed pursuant to adjournment, Mr. Justice Barnard presiding.

\*            \*            \*            \*            \*            \*

ELIZABETH J. MILLER, Exr., &c., Pl't'ff,	}	At Law. No. 47122.
v.		
POTOMAC LAUNDRY Co., Def't.		

Upon motion of the defendant, it is ordered that the time within which to file the transcript of record in the Court of Appeals be, and it hereby is extended until July 1st, 1905, inclusive.

## 35            Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, }  
                   *District of Columbia,* } ss:

I, John R. Young, clerk of the supreme court of the District of Columbia, hereby certify the foregoing pages, numbered from 1 to 34, inclusive, to be a true and correct transcript of the record, as per directions of counsel herein filed, copies of which are made part of this transcript, in cause No. 47,122, at law, wherein Elizabeth J. Miller, executrix, is plaintiff, and The Potomac Laundry Company, a corporation, is defendant, as the same remains upon the files and of record in said court.

Seal Supreme Court of the District of Columbia.	In testimony whereof, I hereunto subscribe my name and affix the seal of said court, at the city of Washington, in said District, this 28th day of June, A. D. 1905.
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JOHN R. YOUNG, *Clerk.*

Endorsed on cover: District of Columbia supreme court. No. 1574. The Potomac Laundry Company, a corporation, appellant, vs. Elizabeth J. Miller, executrix of the will of James E. Miller, deceased. Court of Appeals, District of Columbia. Filed Jun- 28, 1905. Henry W. Hodges, clerk.